

(2008) 05 P&H CK 0062
In the Punjab And Haryana At Chandigarh

Rajinder Kumar

APPELLANT

Vs

Central Administrative Tribunal, Chandigarh Bench

RESPONDENT

Date of Decision : 14-05-2008

Acts Referred:

Citation : (2008) 114 FLR 674 : (2008) 3 PLR 180 : (2008) 3 RCR(Civil) 463

Hon'ble Judges : Sabina, J;M.M. Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The instant petition is directed against order dated 10.1.2002 (P-II), passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for brevity, "the Tribunal"), dismissing the Original Application No. 1232/HR/96. The Tribunal has upheld the order dated 26.11.1996, terminating the services of the petitioner, who was a probationer.

2. Facts are not in dispute. The petitioner was appointed as Heavy Duty Driver with the Director, National Dairy Research Institute, Kamal-respondent No. 3 initially for a period of two years. He was put on probation with effect from 18.3.1995, vide order dated 25.3.1995 (P-1). On a complaint filed against the petitioner regarding his educational qualification acquired from Sarvodaya Junior High School, Beharipur Dundaheera, Ghaziabad (D.P.), an inquiry was ordered. The petitioner was issued a letter dated 13.11.1996 seeking his explanation as to how he had obtained the certificate mentioning that he remained student in that school from 12.7.1985 to 26.5.1986, whereas the school itself was established in the year 1987 (P-3). The petitioner filed his reply on 19.11.1996 (P-5) claiming that the certificate submitted by him was correct and that he had actually studied in that school during the aforementioned period. He submitted that the regular Principal was not available and, therefore, after his return he was to collect the information from that school. Respondent No. 3, however, found that in the transfer certificate submitted by the petitioner it was mentioned that he studied in the school w.e.f. 12.7.1985 to 26.5.1986 and on verification about the

authenticity of the certificate from the school, the Manager intimated that the school was established on 20.6.1987. On the basis of the aforementioned communication the certificate submitted by the petitioner was found fabricated and he was terminated from service vide order dated 26.11.1996 (P-6).

3. On the ground that the order dated 26.11.1996, terminating the services of the petitioner, is punitive in nature and that it has been sent to him when he was on leave on 30.11.1996 it was liable to be set aside. The petitioner challenged the order before the Tribunal. He also raised another issue that he was entitled to the benefits of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, and the impugned order dated 26.11.1996 (P-6) was liable to be set aside. The order of termination being simplicitor in nature, the Tribunal considered the issue as to whether it was passed within the period of probation or it is an order which is punitive in nature. The Tribunal noticed that the order did not attach any stigma nor it refer to any document or inquiry, which may cause aspersion on the conduct of the petitioner and observed as under:

13. A perusal of the order of termination shows that it does not attach any stigma and it does not refer to any document or enquiry which may cause aspersions (aspersions?) on the conduct of the applicant. The law on this subject is settled that in such a situation as present one, there are two courses open to the employer either to institute a regular enquiry and punish the guilty official in accordance with the Discipline and Appeal Rules or to terminate his services in accordance with the terms of appointment and in the present case the respondents have adopted the latter method. This course of action was permissible in terms of law enunciated by Hon"ble Apex Court in the case of Kaushal Kishore Shukla v. State of U.P. and Anr. reported as J.T. 1991(1) S.C. 198.

4. With regard to presentation of certificate, the Tribunal has recorded finding in para 14, which reads thus:

14. We find that the applicant, in the attestation form has given the period of study at Sarvodya Junior High School, Bihasripur, Dundahera Distt. Ghaziabad w.e.f. 12.7.1975 to 20.5.1979. However, in the school leaving certificate this has been given from 12.7.1985 to 26.5.1985. The certificate produced by the applicant was not the original copy of the certificate. It was duplicate copy of the certificate purported to have been attested by the Principal of that School on 8th September, 1989. Under the column, "Whether the student studied in any school, if so, name of the last Institute". Entry against this is "By affidavit". Below that, entry is "Duration of the stay in this State" against which it is mentioned "One year". Whereas, in the attestation form the address of the applicant is that of his native place, whereas in the transfer certificate it is mentioned that he studied for one year in the State of U.P. from where the certificate dated 5.11.96 and 30.11.96 have been issued by one and the same person and it is quite possible that the certificate dated 5.1.96 was issued in the ordinary course of business and after consulting the records and it appears that after the notice was issued

by the respondents to the applicant, he approached the said School and only to help the applicant, this letter dated 30.11.96 was issued. We have perused this letter, which shows that there is no record with the said school from where the duplicate copy of the transfer certificate was issued and the reason for non availability of record is that there was a theft and dacoity in 1989-90. Circumstances speak for themselves and School Leaving Certificate creates multiple doubts which are not reconcilable.

The Tribunal went on to observe that the certificate did not bear any number and has been issued in a casual manner and that the original of the duplicate certificate purported to have been issued on 8.9.1989, by the Principal of the School, was in possession of respondent No. 3 and the District Basic Education Officer could not have issued a duplicate certificate in the absence of the original. Therefore, the Tribunal did not accept the authenticity of the certificate dated 8.9.1989, which was produced as A-8 before the Tribunal.

5. We have heard learned Counsel for the petitioner at a considerable length and find that there is no merit in the instant petition. It is admitted position that the petitioner was on probation and before completion of his probation period his services were terminated vide order dated 26.11.1996. The mere fact that explanation of the petitioner with regard to the certificate showing his educational qualification was called and found unsatisfactory, would not necessarily make an order simplicitor a punitive order. The Tribunal has rightly placed reliance on a judgment of Hon''ble the Supreme Court in the case of State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, . Once it is accepted that the petitioner was a probationer, it follows that he has no right to the post. In that case the employee was an Assistant Auditor in the Local Fund Audit Examiner of the State of U.P. he was appointed on ad hoc basis in 1977. His services were extended from time to time. He earned one adverse entry for the year 1977-78 to the effect that his work was poor and he was advised to work hard and take interest. On receipt of a complaint a preliminary inquiry was held and it was found that the allegation against him were correct. However, the services were terminated in exercise of power under the term of contract and the rules. It was in these circumstances that Hon''ble the Supreme Court held as under:

13. In the instant case the respondent was a temporary government servant and there was adverse report regarding his work which was reflected in the adverse remarks made for the year 1977-78. The competent authority held a preliminary inquiry in the allegations of improper conduct in carrying out unauthorised audit of Boys Fund of an educational institution, on result of the preliminary enquiry no charges were framed against the respondent, no officer was appointed for holding the departmental inquiry instead the competent authority chose to terminate the respondent's services in exercise of its powers under the terms of contract as well as under the relevant rules applicable to a temporary government servant. It never intended to dismiss the respondent from service.

Holding of preliminary inquiry does not effect the nature of the termination, order. The allegations made against the respondent contained in the counter-affidavit by way of a defence filed on behalf of the appellants also do not change the nature and character of the order of termination.

6. The aforementioned view has been followed by their Lordships" of Hon"ble the Supreme Court in the cases of Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd., ; Rajasthan State Road Transport Corporation and Others Vs. Zakir Hussain, ; and Union of India (UOI) and Others Vs. A.P. Bajpai and Others, . The argument of the learned Counsel for the petitioner that the order must be regarded as punitive in nature because it proceeds from an allegation of a misconduct based on presentation of a fabricated certificate does not impress us. The reason for rejection of the argument is that the petitioner did not have any right to the post as he was merely a probationer nor any inquiry was held against him. Only a preliminary investigation was carried on the same line as was done in Kaushal Kishore Shokla"s case (supra). Such preliminary investigation cannot be constituted a basis for holding that the order of termination is punitive in nature. His other submission that the certificate, in fact, was genuine does not require any detailed consideration because nothing turns on the authenticity of the document as the petitioner did not acquire any right to hold the post because he was merely a probationer. Therefore, the submission made by the learned Counsel is rejected.

No other argument has been raised.

For the reasons aforementioned, this petition fails and the same is dismissed.